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In re Application of: :
PITSON, Stuart. :
Application No.: 10/509,036 : DECISION
PCT Application No.: PCT/AU2003/00388 :
Int. Filing Date: 28 March 2003 : UNDER
Priority Date: 28 March 2002 :
Atty Docket No.: 229752003700 : 37 CFR 1.137(b)
For: A METHOD OF MODULATING CELLULAR
ACTIVITY

This decision is in response to applicants' "PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 C.F.R. 1.137(b)" filed 16 April 2007, which has been treated as a petition under 37 C.F.R. 1.137(b).

BACKGROUND

On 28 March 2003, applicants filed international application PCT/AU2003/00388, which designated the U.S. and claimed priority date of 28 March 2002. The thirty-month period for paying the basic national fee in the United States expired at midnight on 28 September 2004.

On 27 September 2004, applicants filed national papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basis national fee.

On 08 March 2005, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that a oath or declaration in compliance with 37 CFR 1.497 and a copy of the "Sequence Listing" in computer readable form required by 37 CFR 1.821(e) must be filed.

On 17 July 2006, international application PCT/AU2003/00388 became abandoned as to the United States for failure to timely respond to the Notification of Missing Requirements.

On 16 April 2007, applicants filed, *inter alia*, a declaration, a copy of the “Sequence Listing” in computer readable form, and a petition under 37 CFR 1.137(b).

DISCUSSION

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional abandonment must be accompanied by (1) the required reply, (2) the petition fee required by law, (3) a statement that the, “entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional” and (4) any terminal disclaimer and fee pursuant to 37 CFR 1.137(c) (where required).

Regarding items (2), (3) and (4), the applicant has provided the petition fee and the proper statement. In this application, no terminal disclaimer is required.

Regarding item (1), applicant has provided a declaration that appears to be a composite declaration created from the combination of separately executed declarations. It appears that either the attorney pieced together separate complete declarations into one composite declaration or that the inventors were presented with an incomplete declaration. While it is acceptable for applicants to execute separate copies of the declaration, the entire declaration, as executed by the inventor, must be submitted. “Where individual declarations are executed, they must be submitted as individual declaration rather than combined into one declaration.” See MPEP 201.03. What is required is one declaration where all inventors have signed or separate complete declarations. The requirements of 37 CFR 1.497 (a) and (b) have not been met and the declaration is unacceptable as filed. Further, the applicant has provided a computer readable form (CFR) of the “Sequence Listing” that is not saved in the required ASCII text. Accordingly, applicant has not submitted the required reply in response to the Notification of Missing Requirements.

CONCLUSION

For the reasons noted above, petition to revive under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this action is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Bena Miller
Detailee PCT Legal Examiner
Office of PCT Legal Administration



Boris Milef
PCT Legal Examiner
Office of PCT Legal Administration

Enclosure: CFR Problem Report

aqSTIC Biotechnology Systems Branch

CRF Problem Report

The Biotechnology Systems Branch of the Scientific and Technical Information Center (STIC) experienced a problem when processing the following computer readable form (CRF):

Application Serial Number: 10/509,036
Filing Date: 09/27/2004
Date Processed by STIC: 4/27/2007

STIC Contact: Mark Spencer: Telephone: 571-272-2510; Fax: 571-273-0221

Nature of CRF Problem:

(circle one) Damaged or Unreadable (for Unreadable, see attached)
 Blank (no files on CRF) (see attached)
 Empty file (filename present, but no bytes in file) (see attached)
 Wrong file saved to CRF (invention title, docket number, or applicant(s) do not match those in official application) (see attached)
 Not saved in ASCII text (See attached)
 Sequence Listing was embedded in the file. According to Sequence Rules, submitted file should **only** be the Sequence Listing.
 Did not contain a Sequence Listing. (see attached sample)
 Other:

**PLEASE USE THE CHECKER VERSION 4.4.0 PROGRAM TO REDUCE ERRORS.
SEE BELOW FOR ADDRESS:**

<http://www.uspto.gov/web/offices/pac/checker/chkrnote.htm>

1. EFS-Bio (<http://www.uspto.gov/ebc/efs/downloads/documents.htm>), EFS Submission User Manual - ePAVE)
2. U.S. Postal Service: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450
3. Hand Carry, Federal Express, United Parcel Service, or other delivery service (EFFECTIVE 01/14/05): U.S. Patent and Trademark Office, Mail Stop Sequence, Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314

Revised 01/20/06

WO 03/082322

1/6

10/509056

PCT/AU03/00388

SEQUENCE LISTING

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<120> A Method of Modulating Cellular Activity
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